11-19-2012

State v. Silver Appellant's Brief Dckt. 40017

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Appellant,	)	NO. 40017
	)	
vs.	)	
	)	
TENNISON MICHAEL SILVER,	)	
	)	
Defendant-Respondent.	)	
	)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

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STATEMENT OF THE CASE

Nature Of The Case

The state appeals from the district court's order suppressing Tennison Silver's statements made to law enforcement officers during a traffic stop.

Statement Of The Facts And Course Of The Proceedings

Police officer Jon Lenker stopped Silver's vehicle after observing Silver both fail to stop at a stop sign and exceed the posted speed limit. (R., pp.71-72; Tr., p.6, L.8 – p.7, L.14.) As Officer Lenker approached Silver's vehicle, he smelled the odor of marijuana and observed Silver to be shaking. (R., p.72; Tr., p.9, L.22 – p.10, L.18.) In response to Officer Lenker's inquiry about the odor, Silver responded that he hadn't smoked marijuana in several months, and that the smell came from a friend of his whose house he had been at. (R., p.72; Tr., p.9, L.22 – p.10, L.5.) Suspecting that Silver may be under the influence of marijuana, Officer Lenker asked him to exit the vehicle so he could conduct standard field sobriety tests. (R., p.72; Tr., p.11, L.22 – p.12, L.1.)

As Officer Lenker began to explain and conduct the field sobriety tests, Officer Kelly, who had arrived on scene, observed a baggie full of marijuana sticking out of Silver's coat pocket in plain view. (R., p.72; Tr., Tr., p.29, L.19 – p.30, L.10.) Officer Kelly took possession of the baggie. (R., p.72; P.30, Ls.11-15.) Officer Lenker asked Silver again how long it had been since he smoked marijuana, and Silver admitted it had been only thirty minutes. (R., p.72; Tr., p.30, Ls.16-21.)

Officer Lenker then asked Silver if he currently possessed any additional contraband. (R., p.74.) Officer Lenker told Silver that if he was arrested, having additional marijuana on his person could result in a separate criminal charge for introducing contraband into the jail. (Id.; Tr., p.13, Ls.17-24.) Officer Kelly added that with the marijuana evidence that had already been obtained, the officers could "rip apart" and search Silver's car. (R., p.74; Tr., p.15, Ls.5-17; p.30, L.17 – p.31, L.8.) Silver then informed the officers that there was approximately one ounce of marijuana in the front seat of the vehicle down on the floorboards. (R., pp.72, 74; Tr., p.16, Ls.5-9; p.31, Ls.9-14.) Officer Kelly retrieved the marijuana, which was contained in smaller baggies within a larger baggie, from Silver's car. (R., p.74; Tr., p.31, Ls.9-21.)

Recognizing that an ounce of marijuana was a significant amount for mere personal use, Officer Lenker asked Silver whether he had planned to deliver the marijuana to someone else. (Tr., p.16, Ls.12-21.) Silver admitted that he was delivering the marijuana to a friend. (R., p.72; Tr., p.16, Ls.12-21.) Officer Lenker then told Silver that he had to complete the standard field sobriety tests before deciding whether he was going to arrest Silver. (R., p.78; state's exhibit A, 7:46-7:52.) While the SFSTs were being conducted, Silver stated to Officer Lenker, "I'm going to jail no matter what, aren't I?" (Tr., p.16, Ls.22-25; state's exhibit A, 8:45-8:49.) Officer Lenker replied that he still had to determine whether Silver was under the influence of marijuana, but that he was "leaning" towards arresting Silver because of the amount of marijuana he possessed and his admission that he planned to deliver it. (State's exhibit A, 8:59-9:11.) At this

point, Silver referenced his uncle, who was a reserve police officer at the time. (Tr., p.21, L.15 – p.22, L.3.) Officer Lenker told Silver that his uncle would be disappointed if he lied to the police. (Id.)

After Silver failed to successfully complete the standard field sobriety tests Officer Lenker placed him under arrest. (R., pp.72, 74-75; Tr., p.21, Ls.12-14; state's exhibit A, 13:07-13:25.) The state charged Silver with possession of marijuana with intent to deliver and misdemeanor DUI, and the district court consolidated these cases. (R., pp.39-40; 48-50; see also Idaho Data Repository, Jerome County, Case No. CR 2011-07015.)

Silver filed a motion to suppress his statements made during the traffic stop, asserting that the officers had engaged in a custodial interrogation of him without first reciting Miranda[1] warnings. (R., pp.55-61.) After a hearing, the district court suppressed all statements made by Silver after the marijuana was found in his vehicle. (R., pp.71-86.) The state timely appealed. (R., p.87-90.)

[1] Miranda v. Arizona, 384 U.S. 436 (1966).

ISSUE

Did the district court err in granting Silver's suppression motion?

ARGUMENT

The District Court Erred In Granting Silver's Suppression Motion

A. Introduction

The district court suppressed statements made by Silver to law enforcement officers after concluding that the officers subjected Silver to custodial interrogation without first reciting required Miranda warnings. (R., pp.71-86.) However, the district court's legal analysis was flawed because it incorrectly focused on Silver's "reasonable belief" that he was going to be placed under formal arrest at the conclusion of the traffic stop, as opposed to whether Silver was actually in custody for Miranda purposes at the time he made incriminating statements to the officers. The district court therefore erred in granting Silver's motion to suppress.

B. Standard Of Review

The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, the appellate court accepts the trial court's findings of fact that are supported by substantial evidence, but freely reviews the application of constitutional principles to those facts. State v. Klingler, 143 Idaho 494, 496, 148 P.3d 1240, 1242 (2006).

C. The District Court Erred In Granting Silver's Suppression Motion

To safeguard the privilege against self-incrimination afforded by the Fifth Amendment to the United States Constitution, the United States Supreme Court held in Miranda v. Arizona, 384 U.S. 436, 478-79 (1966), that before an individual

is subjected to custodial interrogation, the interrogating officers must advise the individual of certain rights, including the right to remain silent. The test for determining whether an individual is in custody for purposes of Miranda is whether, considering the totality of the circumstances surrounding the interrogation, there was a "formal arrest or restraint on freedom of movement of the degree associated with a formal arrest." California v. Beheler, 463 U.S. 1121, 1125 (1983) (quoting Oregon v. Mathiason, 429 U.S. 492, 495 (1977)).

Because the "in custody" test for Miranda requires a restraint on freedom associated with formal arrest, a person subjected to an investigative detention based on reasonable suspicion of criminal activity, although not "free to leave," is ordinarily not in custody for purposes of Miranda. See Berkemer v. McCarty, 468 U.S. 420 (1984); State v. Ybarra, 102 Idaho 573, 634 P.2d 435 (1981); see also State v. Silva, 134 Idaho 848, 854, 11 P.3d 44, 50 (Ct. App. 2000). For example, neither traffic stops nor the conducting of standard field sobriety tests immediately invoke Miranda. Berkemer, 468 U.S. at 440; State v. Pilik, 129 Idaho 50, 52, 921 P.2d 750, 752 (Ct. App. 1996).

The standard for determining when a suspect is in custody and Miranda warnings are required does not depend on the subjective belief of the suspect or officer. Rather, when applying this test, the relevant inquiry is how a reasonable person in the suspect's position would have understood his situation. Berkemer, 468 U.S. at 442; State v. Doe, 137 Idaho 519, 523, 50 P.3d 1014, 1018 (2002); State v. Albaugh, 133 Idaho 587, 591, 990 P.2d 753, 757 (Ct. App. 1999). Specifically, the inquiry is "whether a reasonable person would believe he or she

was in police custody to a degree associated with formal arrest, not whether the person would believe he or she was not free to leave." Silva, 134 Idaho at 854, 11 P.3d at 50.

In determining whether an individual is in custody, the Court must consider all of the circumstances surrounding the interrogation. Doe, 137 Idaho at 523, 50 P.3d at 1018. Relevant factors include the time, location, and public visibility of the interrogation, the conduct of the officers, the nature and manner of the questioning, and the presence of other persons. State v. Medrano, 123 Idaho 114, 117, 844 P.2d 1364, 1367 (Ct. App. 1992); Albaugh, 133 Idaho at 591, 990 P.2d at 757; Berkemer, 468 U.S. at 441-442. In State v. James, 148 Idaho 574, 577, 225 P.3d 1169, 1172 (2010), the Idaho Supreme Court held that the burden of showing custody for the purposes of Miranda lies on the defendant.

In James, a police officer who conducted a traffic stop threatened to arrest all of the occupants of the stopped vehicle unless someone admitted possession of drugs and paraphernalia that were found in the car. Id. at 575-576, 225 P.3d at 1169-1170. James then admitted ownership of the drugs and paraphernalia. Id. James moved to suppress his confession, asserting that the officer's threat constituted a custodial arrest for the purposes of Miranda. Id. The Idaho Supreme Court affirmed the district court's denial of James' motion to suppress, holding that "a conditional threat of future lawful arrest alone does not transform detention into 'custody' for the purposes of Miranda." Id. at 576-578, 225 P.3d at 1171-1173. The officer's statement of his intended future conduct could not be

said to "objectively change the degree of restraint *at the time of the statement.*" Id. at 578, 225 P.3d at 1173 (emphasis in original).

Similarly, in this case, Officer Lenker's threats and comments regarding his potential future actions and the possibility of Silver's future formal arrest did not change the degree of Silver's restraint, and they thus did not implicate Miranda. In fact, Officer Lenker's threats and comments regarding the possibility of Silver's arrest were much more indirect than the specific threat employed by the officer in James. Even after recovering the marijuana in Silver's vehicle, Officer Lenker told Silver that he needed to complete the standard field sobriety tests before he could make a decision whether to arrest Silver. (R., p.78; state's exhibit A, 7:46-7:52.) When Silver initiated further discussion about his prospect of future arrest, Officer Lenker told him merely that he was "leaning" towards arresting Silver. (State's exhibit A, 8:59-9:11.)

Further, like in Smith, Officer Lenker's and Officer Kelly's statements about their future potential actions each had legitimate bases in fact and the law. Attempting to introduce marijuana into a correctional facility is a felony offense. I.C. § 18-2510(3). The odor of marijuana coming from Silver's car, Silver's admission that he had smoked marijuana thirty minutes prior to the traffic stop, and the discovery of marijuana on Silver's person certainly gave the officers, as Officer Kelly indicated to Silver, probable cause to search Silver's vehicle for marijuana. See State v. Gallegos, 120 Idaho 894, 898, 821 P.2d 949, 953 (1991).

In addition, there is no evidence Silver was placed in handcuffs until his formal arrest at the conclusion of the traffic stop, and his contact with the officers

took place on the side of a public roadway. (Tr., p.6, L.8 – p.7, L.4.) Further, the duration of Silver's contact with the officers was relatively brief. Only approximately thirteen minutes elapsed between Officer Lenker's initial contact with Silver and Silver's formal arrest – a duration of time which included the conducting of the field sobriety tests. (State's exhibit A, 0:19 – 13:27.) Also, there were only two police officers at the scene, and the tone of the officers during their contact with Silver was not particularly hostile over overbearing. (See generally, state's exhibit A.)

In granting Silver's motion to suppress, the district court concluded that Silver was subject to formal custody for the purposes of Miranda by the time the officers recovered the marijuana in his vehicle, and that the officers interrogated Silver while he was in custody.[2] (R., pp.71-86.) While recognizing and quoting from James, the district court failed to articulate how the present circumstances were distinguishable and instead concluded:

> However, [the officer's statement that Silver could be subject to felony charges if he were arrested and had marijuana on his person upon being booked into jail] implies that the defendant [was] likely to be subject to arrest, as the defendant could not commit introduction of contraband into a secure facility unless he was booked into that facility. An additional factor is that Officer Kelly threatening to rip or tear "his car apart" or Lenker's comment about the defendant's uncle's reaction all contributed to a reasonable belief that he was going to be placed under arrest.

(R., p.83.)

[2] The district court analyzed the officers' questioning of Silver and found that it constituted an interrogation for the purposes of Miranda. (R., pp.83-85.) The state concedes that *if* Silver had been in custody for the purposes of Miranda, than the officers' questioning of him would have implicated Miranda.

The district court's finding of reasonable belief in a future arrest does not support a conclusion that Silver was in custody at the time he made the statements at issue. While Silver was no doubt "subject to arrest" as soon as marijuana was found on his person, and while he very well may have had "a reasonable belief that he was going to placed under arrest," "[e]xpectation, apprehension, or knowledge of inevitable arrest are not the Miranda triggers; custody is." People v. Hankins, 201 P.3d 1215, 1219 (Colo. 2009).

The erroneous nature of the district court's focus on future arrest is best illustrated by Idaho cases where courts relied on Berkemer in concluding that an individual was not in custody (or the equivalent of formal arrest) where an individual was being detained on a suspected DUI and where the investigating officer required the suspect to take a field sobriety test that resulted in an arrest. See State v. Benefiel, 131 Idaho 226, 229, 953 P.2d 976, 979 (1998); State v. Pilik, 129 Idaho 50, 52, 921 P.2d 750, 752 (Ct. App. 1996); State v. Jones, 115 Idaho 1029, 1033, 772 P.2d 236, 240 (Ct. App.1989); State v. Hartwig, 112 Idaho 370, 374, 732 P.2d 339, 343 (Ct. App. 1987).

In these cases, the court reasoned that the individual suspect was not in custody. The court made this determination even though at the time the officer requested the field sobriety test, the defendant likely knew that he would fail the tests and ultimately be arrested. The focus in these cases was not, however, on whether the defendants thought they would be arrested but, consistent with Berkemer, whether the defendants were in custody. In this case, the district court did the opposite. Instead of focusing on the present status, whether Silver

was in custody, the court focused on when a reasonable person in Silver's position would have believed that he was "subject to arrest," and whether he "felt free to leave" while performing field sobriety tests. (R., p.85.) Indeed, Silver, who was driving under the influence, and had marijuana on his person and in his vehicle, could reasonably have concluded he was soon "going to be placed under arrest" from the moment he saw Officer Lenker's police vehicle's flashing lights in his rear-view mirror. However, such a person is still not in "custody" for the purposes of Miranda until that custody actually occurs. In this case, Silver was not placed in custody for the purposes of Miranda until the conclusion of the traffic stop.

The district court incorrectly focused on Silver's reasonable expectation of future arrest in concluding that Silver was already subject to custodial arrest for purposes of Miranda. Reversal and remand for application of the correct analysis is therefore appropriate.

CONCLUSION

The state respectfully requests this Court to reverse the district court's order suppressing evidence and remand for further proceedings.

DATED this 19th day of November, 2012.

MARK W. OLSON
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 19th day of November, 2012, I caused a true and correct copy of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

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MWO/pm